

Perkins Repayment Plans, Forbearance, Deferment, Discharge, and Cancellation



The Federal Perkins Loan Program offers borrowers a variety of forbearance, deferment, and cancellation options. Additionally, there are a number of situations that allow a Perkins, National Direct, or Defense Loan to be discharged. We also discuss Perkins repayment plans.

GRACE PERIODS

A grace period is the period of time before the borrower must begin or resume repaying a loan. There are two kinds of grace periods for Perkins Loans: initial grace periods and post-deferment grace periods. Perkins loan payments are based on what is necessary to pay the loan off in a 10 year period. Borrowers in a grace period are not considered to be in repayment, and grace periods therefore are not included in the 10 year period used to calculate Perkins payments. See also the Calculating the Perkins repayment amount section later in this chapter.

A grace period is always day-specific—an initial grace period begins the day after the day the borrower drops below half-time enrollment. Similarly, a post-deferment grace period begins on the day immediately following the day on which an authorized period of deferment ends.

If a borrower has received loans with different grace periods (and different deferment provisions), the borrower must repay each loan according to the terms of its promissory note; the borrower must pay the minimum monthly payment amount that applies to each loan that is not in a grace or deferment period.

Initial Perkins grace periods

A Perkins borrower is entitled to one initial grace period of nine consecutive months after dropping below half-time enrollment. If the borrower returns to school on at least a half-time basis before the nine months have elapsed, the initial grace period has not been used. The borrower is entitled to one full initial grace period (nine consecutive

months) from the date that he or she graduates, withdraws, or drops below half-time enrollment again.

If a borrower requests a deferment to begin during the initial grace period, the borrower must waive (in writing) his or her rights to the initial grace period. The request for a deferment alone is not sufficient documentation for a school to waive the initial grace period; the borrower must also acknowledge in writing that he or she wants the waiver.

Post-deferment Perkins grace periods

A *post-deferment grace period* is the period of six consecutive months that immediately follows the end of a period of deferment and precedes the date on which the borrower must resume repayment on the loan. Neither the deferment nor the grace period is counted as part of the 10-year repayment period.

Except for hardship deferments on loans made before July 1, 1993, all deferments for all loans made under the Federal Perkins Loan Program have post-deferment grace periods of six consecutive months.

Perkins Grace period when student is attending less than half-time

A borrower who is attending less than half time and who has no outstanding Perkins Loans must begin repaying a new loan nine months from the date the loan is made or nine months from the date the student enrolled less than half time, whichever is earlier. (This nine-month period includes the date on which the loan was made.)

A borrower who is attending less than half time and who has an outstanding Perkins Loan or NDSL must begin repayment on an additional loan when the next scheduled installment of the outstanding loan is due; there is no formal grace period or in-school deferment on the new loan.

Perkins Grace period when student doesn't return from leave of absence

Students granted approved leaves of absence retain their in-school status for FSA loans. However, if a student does not return from an approved leave of absence, the student's grace period begins the date the student began the leave of absence. (If the school is required to take attendance, the grace period begins on the last date of academic attendance.)

For a student who does not return from an approved leave of absence, this withdrawal date might result in the exhaustion of some or all of the student's grace period.

Leaves of absence no longer qualify as approved leaves of absence for FSA purposes unless the school explains the effects that the student's failure to return from an approved leave of absence might have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

Grace periods for NDSLs

Repayment of an NDSL made on or after October 1, 1980 begins **six months** after the date that the borrower drops below at least half-time enrollment.

Required precollection activities during the grace period

Collection procedures on the part of a school or its servicer begin on the day a student ceases to be enrolled at least half-time. By performing certain pre-collection activities, a school or its servicer can increase the likelihood that a student will begin satisfactory repayment on his or her Federal Perkins Loan. The school must perform and maintain documentation substantiating that it has contacted the borrower:

1. For Federal Perkins Loans, the school shall contact the borrower three times within the initial grace period.
2. For loans with a six-month initial or post-deferment grace period, the school shall contact the borrower twice during the grace period.
3. The school or its servicer shall contact the borrower for the first time 90 days after the commencement of any grace period. The school shall, at this time, remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower
 - the total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan; and
 - the date and amount of the first required payment.
4. The school shall contact the borrower the second time 150 days after the commencement of any grace period. The school shall, at this time, notify the borrower of the date and amount of the first required payment.
5. The school shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period and shall inform him or her of the date and amount of the first required payment.

Grace period

Definitions

34 CFR 674.2

Initial Grace Period Examples

Example: Student returns before initial grace period elapses

Fenriz takes out a Perkins Loan in the fall quarter at Sims School of Botany but drops out of school for the winter quarter. He reenrolls as a half-time student in the summer session before the nine-month grace period has expired. Therefore, Fenriz is entitled to a full initial grace period once he again leaves school or drops below half-time status.

Example: Different grace period for earlier loans

Steve took out several Perkins Loans while attending New Frontier Community College (NFCC) and began repaying them nine months after graduating. Later, he enrolled in a bachelor's degree program at Old Ivy College and was able to defer his older Perkins Loans. He took out two additional Perkins Loans at Old Ivy.

When Steve graduates from Old Ivy, he is entitled to an initial grace period (nine months) for his Perkins Loans at Old Ivy but must resume repaying his older Perkins Loans (from NFCC) at the end of the six-month post-deferment period.

Exclusion for Reservists on Active Duty

If a borrower is a member of the Armed Forces Reserve, the initial grace period does not include any period (up to three years) during which the borrower is ordered to active duty for more than 30 days, including the period necessary for the borrower to resume enrollment at the next available enrollment period. The period necessary for the borrower to resume enrollment at the next available enrollment period may not exceed 12 months.

The borrower must notify you of the beginning and end dates of his or her service and the date he or she resumes enrollment. A borrower who enrolls in a different educational program after returning from active duty is entitled to the same grace period benefits. A borrower who is in a grace period when called or ordered to active duty is entitled to a new grace period upon conclusion of the excluded period.

Grace Periods and Less Than Half-Time Enrollment

Example: Perkins received while enrolled less than half-time

Paula started school full-time in September. She did not have an outstanding Perkins Loan or NDSL. In January, Paula dropped to one-quarter-time and in March, she received a Perkins Loan.

Since Paula dropped below half-time enrollment *before* the Perkins Loan was made, Paula must begin repayment nine months after the date she dropped below half-time enrollment—her first payment will be due in October.

Example: Second Perkins Loan received while first loan is in repayment

Jason had been making monthly payments on Perkins Loan #1, which went into repayment nine months after he completed a one-year program at a career school.

He subsequently enrolled in a new program at a community college and received Perkins Loan (#2) in September. He was only enrolled one-quarter-time at the community college, so he was not eligible for in-school deferment. Jason's next payment on Loan #1 is due October 15. Jason will begin repaying Loan #2 at the same time. ***Remember that the repayment status of the outstanding loan determines the repayment status of the second loan.***

Perkins Prepayment

A borrower may prepay all or part of a Perkins Loan at any time without penalty. If a borrower makes a payment during the academic year in which a loan was made, the school must use any amount repaid to reduce the original loan amount and not consider these amounts to be prepayments. If a borrower makes a payment during the academic year in which the loan was made and the initial grace period has already ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments.

If a borrower makes a payment in any academic year, other than the one in which the loan was made, that exceeds the amount due for any repayment period, the school must use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

Payment Made During Initial Grace Period Example

Shannon applies her yearly birthday check of \$400 to her \$1,000 Perkins Loan before the initial grace period ends. Then, the principal advanced to Shannon becomes \$600. This is not considered a prepayment because payment was made before the end of the initial grace period entering repayment (because payment was made before the end of the initial grace period).

Prepayment

34 CFR 674.31(b)(4)

Less than half-time grace periods

34 CFR 674.32

Approved leaves of absence

34 CFR 668.22 (c)(1)(v) and (vi);

34 CFR 668.22 (d)

ESTABLISHING A REPAYMENT PLAN

A borrower must repay his or her loan, plus interest, in 10 years. This repayment period never includes authorized periods of deferment, forbearance, or cancellation. The repayment plan must be established and disclosed to the student before the student ceases to be enrolled at least half-time. If a student receives loans from more than one school, the repayment of each loan is made to the school where the student received the loan.

Calculating the repayment amount

Schools may require the borrower to make payments on a monthly, bimonthly, or quarterly basis. Each of the borrower's payments must sufficiently cover the interest accruing between payments to ensure that the loan is repaid in 10 years. Schools calculate the correct payment amount by multiplying the principal by the appropriate constant multiplier (see table). Schools using the minimum monthly payment plan option may require the borrower to pay a minimum monthly amount of \$40 instead.

If the installment for all loans a school made to a borrower is not a multiple of \$5, the school may round the installment payments to the next highest dollar amount that is a multiple of \$5. If the last scheduled payment is \$25 or less, the school may combine it with the next-to-last payment.

Interest accrual

Interest on a Perkins Loan made on or after October 1, 1981, must be computed at the rate of 5% per annum simple interest on the unpaid principal balance. Although interest accrues on a Perkins Loan, *your school may not capitalize it*. This means that your school may not add unpaid interest to the principal balance to increase the principal balance of the Perkins Loan. Instead, your school must track principal and interest as separate figures, adding accrued interest to the interest balance, *not* the principal balance.

Interest is generally computed from the date a payment is received rather than from the due date. However, there are exceptions. Interest charges may be computed to the nearest first-of-the-month, or they may be computed in accordance with the borrower's established schedule of payments of principal and interest if the borrower is making payments on a regular basis according to that schedule. For example, if a grace period expires in the middle of a month, interest may be computed to the beginning of the next month. Also, if a past-due payment is received before the next regularly scheduled payment, the interest may be computed according to the established payment schedule—no adjustments are necessary.

10-Year Repayment Table of Constant Multipliers

Annual Rate	Payment Frequency	Payments Per Year	Total Payments	Constant Multiplier
5%	Monthly	12	120	.0106065
5%	Bimonthly	6	60	.0212470
5%	Quarterly	4	40	.0319214

$$\text{Principal} \times \text{Constant Multiplier} = \text{Payment Amount}$$

Interest Rate on Older Perkins Loans

Older Perkins Loans have different interest rates. The interest rate is stated in the borrower's promissory note. The annual interest rate for loans made before July 1, 1981, was 3%; between July 1, 1981, and September 30, 1981, was 4%; on or after October 1, 1981, is 5%.

Calculating Payment Amount Example

Bernadine received a \$2,500 Perkins Loan to attend Jordan College, which requires quarterly payments. To calculate Bernadine's quarterly payment, Jordan College multiplies the original principal by the constant multiplier for a quarterly payment frequency:

$$\$2,500 \times .0319214 = \$79.80$$

Simple Interest Accrual Example

Fred has been granted a hardship forbearance for a year. At the beginning of his forbearance period, Fred's loan balance is \$1,000:

Principal: **\$1,000**
Interest: **\$0**

Interest accrues throughout the forbearance period at a simple rate of 5% per annum. At the end of the year-long forbearance period, Fred's loan balance is \$1,050:

Principal: **\$1,000**
Interest: **\$50**

When Fred makes his first payment after the end of the forbearance, his payment is applied to interest first, then principal. Fred makes a payment of \$25, reducing his balance to \$1,025:

Principal: **\$1,000**
Interest: **\$25**

Incentive repayment program

To encourage repayment, a school may:

- ♦ reduce a loan's interest rate by up to 1% if the borrower makes 48 consecutive monthly payments;
- ♦ discount by up to 5% the balance a borrower owes on a loan if the loan is paid in full before the end of the repayment period; or
- ♦ with the Secretary's approval, establish any other repayment incentive options that reduce default and replenish student loan funds.

A school may not use federal funds or school funds from the Perkins Loan Revolving Fund to absorb the costs associated with repayment incentives. On at least a quarterly basis, schools must reimburse the Perkins Loan Fund for income lost as a result of the discounts offered through the Incentive Repayment Program.

Incentive repayment program

34 CFR 674.33(f)

Minimum monthly repayment amounts

Schools may choose to include a minimum monthly repayment requirement in the Perkins Loan promissory note. The minimum monthly repayment amount is \$40, unless the borrower on the date the new loan is made has an outstanding balance on a Perkins Loan made before October 1, 1992, that included a \$30 minimum monthly repayment provision. To determine the minimum repayment for bimonthly and quarterly payment schedules, schools should multiply \$40 by two (months) and three (months), respectively.

Conditions for minimum monthly repayment

A school may require a borrower to pay a minimum monthly payment amount of \$40 on a Perkins Loan if:

- ♦ the promissory note includes a provision specifying a minimum monthly repayment of \$40 and the monthly repayment of principal and interest for a 10-year repayment period (as calculated using a constant multiplier) would be less than \$40; or
- ♦ the borrower has received Perkins Loans with different interest rates at the same school and the total monthly payment would otherwise be less than \$40 (provided any of the promissory notes includes the minimum monthly repayment provision).

Under no circumstances may a school require a minimum monthly repayment of more than \$40.

Multiple loans at same school

If a borrower has multiple Perkins Loans from the same school, any of which include the minimum monthly payment provision, the school may require the borrower to make a minimum monthly payment if the borrower's total monthly payment on all the loans totals less than \$40. A student's monthly payment amount may need to be higher than \$40, of course, so that his or her debt is repaid by the end of 10 years.

If the school exercises this option, the school must divide each monthly payment among all the loans proportionate to the amount of principal advanced under each loan. If the borrower's total monthly payment equals or exceeds \$40 for all of the loans made at that school, the school may not exercise the minimum monthly payment on any loan. The school determines the minimum monthly repayment in this manner even if the Perkins Loans have different interest rates.

If the borrower has received Perkins Loans with different grace periods and deferments, the school must treat each note separately. The school still divides the minimum monthly payment proportionately among the loans. However, the borrower must pay each loan's portion when it is due.

Loans from multiple schools

A borrower may have received Perkins Loans from more than one school. If the borrower wants your school to coordinate minimum monthly payments with another school, he or she must request such coordination.

If the total of the monthly payments is:

- ♦ *at least equal to \$40*, none of the lending schools may exercise the minimum monthly repayment requirement.
- ♦ *less than \$40, but only one school exercises the minimum monthly payment option*, that school receives the difference between \$40 and the repayment owed to the second school.
- ♦ *less than \$40 and each school exercises the minimum repayment option*, the \$40 minimum repayment is divided among the schools in proportion to the total amount of principal each has advanced.

If the borrower requests that your school coordinate minimum monthly payment amounts with another school, you should ask the borrower for:

- ♦ the names of all other schools to which the borrower owes

funds under the Federal Perkins Loan Program;

- ♦ the approximate amount borrowed from, and the current indebtedness to, each school; and
- ♦ any information that would help identify the loans—for example, the loan number and the dates of loan advances.

Using this information, the schools should contact each other and negotiate the amount each should receive from the borrower.

Two Schools/Minimum Monthly Payment Amount Example

Betsy has Perkins Loans from Heinz College and Elise University. Heinz does not exercise the minimum monthly payment option and receives from Betsy \$25 a month (the amount due under its established 10-year repayment plan). Elise exercises the \$40 option and receives from Betsy \$15, the difference between \$40 and the amount of principal and interest paid to Heinz.

Loans from multiple schools

34 CFR 674.33(b)(2) & (3)

When repayment begins

34 CFR 674.31(b)(2)(B) and (C) and 674.32

Repayment plan requirements

34 CFR 674.33(a)

Minimum monthly payments

34 CFR 674.33(b)

ESTABLISHING REPAYMENT DATES

Depending on the repayment schedule (monthly, bimonthly, or quarterly), the borrower's first payment is due one, two, or three months from the date the grace period expires. Repayment schedules must be adjusted (preferably on the first installment) so that the loan will be repaid within the normal 10-year period or as prescribed in the terms of the promissory note.

For convenience, a school may establish standard repayment dates for borrowers who are on quarterly repayment schedules. The first repayment date may be the first day of the calendar quarter after the grace period has expired. Four standard repayment dates would be used: January 1, April 1, July 1, and October 1. (See the chart above.)

Alternatively, a school may adopt a “rolling” quarterly repayment schedule in which each borrower’s first payment is due exactly three months after the date his or her grace period expires. For example, if a borrower’s first grace period expires on May 17, the first installment payment is due August 18. Another borrower’s grace period expires May 18, so the first installment payment on that loan is due August 19.

Once the payment date is established, the borrower will owe principal and interest for any portion of a scheduled installment period not covered by a deferment. However, if the borrower is in deferment on a due date, any amounts owed are carried over and paid on the first due date on which the borrower is out of deferment.

Extending repayment period for illness, unemployment, or low income

A school may extend a repayment period if the borrower is experiencing a period of prolonged illness or unemployment. A school may also extend the repayment period for a Perkins Loan if, during the repayment period, the school determines that the borrower qualifies as a *low-income individual* based on total family income. In the case of low-income individuals, the repayment period may be extended up to 10 additional years. You must review the borrower’s income status annually to determine whether he or she still qualifies as a low-income individual.

If you determine that a borrower ceases to qualify for an extended repayment period, you must amend the borrower’s repayment schedule. The amended repayment schedule may not exceed the number of months remaining on the original repayment schedule (not including any extensions of the repayment period). There are two other ways that a school may adjust the repayment schedule for a borrower who qualifies as a low-income individual:

- ♦ The school *may* require a borrower to pay a reduced amount for a limited time and then later increase the payment amount so the borrower catches up on payments. The repayment period does not have to be extended. For example, a school reduces the payment amount to \$10 per month for six months and then increases it to \$50 per month until the borrower catches up.
- ♦ The school may allow the borrower to pay \$10 per month for a year and then resume normal payments. This type of adjustment extends the repayment period.

Interest continues to accrue during an extension of a repayment period for any of these reasons.

Extension of repayment for low-income individuals

34 CFR 674.33(c)(2)

Payment processing

Any payment a school receives must be applied in the following order:

1. collection costs;
2. late charges (or penalty charges);
3. accrued interest; and
4. principal.

Past-due payments should be applied in the same order as other payments except that past-due payments must be applied to the “oldest” past-due dollars first.

FORBEARANCE

Forbearance is usually a temporary postponement of payments. Forbearance is available for all loans made under the Federal Perkins Loan Program, regardless of when they were made. The borrower may alternatively request an extension of time allowed for making payments or the acceptance of smaller payments than were previously scheduled.

Schools may grant forbearance to borrowers who are experiencing financial hardship or poor health, or for other acceptable reasons. For example, the Department strongly encourages schools to grant periods of forbearance to borrowers who are serving in AmeriCorps. Also, the Department may authorize periods of forbearance due to a national military mobilization or other national emergency.

Borrowers must request forbearance and provide supporting documentation of the reason for forbearance. (Schools may now process forbearance requests based on a verbal request from a borrower.) The school and borrower must agree to the terms of the forbearance. The school confirms this agreement by notice to the borrower and by recording the terms in the borrower’s file.

Schools may grant the borrower forbearance for a period of up to one year at a time. The forbearance may be renewed, but the periods of forbearance collectively may not exceed a total of three years. A school may apply an authorized period of forbearance to begin retroactively (that is, to begin on an earlier date than the date of the borrower’s request) if the borrower requests that the school do so and if he or she provides adequate documentation to support the request. Schools may not include periods of forbearance in determining the 10-year repayment period.

Perkins Loan Quarterly Billing Example

(with four standard repayment dates)

Borrower's Termination Date	Initial Nine-Month Grace Period Ends	Installment Due
January 1	September 30	January 1
February 1	October 31	"
March 1	November 30	"
April 1	December 31	April 1
May 1	January 31	"
June 1	February 28	"
July 1	March 31	July 1
August 1	April 30	"
September 1	May 31	"
October 1	June 30	October 1
November 1	July 31	"
December 1	August 31	"

Minimum Monthly Repayment Amount for Older Loans

The minimum monthly repayment amount is **\$30** for NDSLs and Perkins Loans made before October 1, 1992, and Perkins Loans made after October 1, 1992, to borrowers who have an outstanding balance on a Perkins Loan, NDSL, or Defense Loan made before October 1, 1992, that included a \$30 minimum monthly repayment provision. The minimum monthly repayment amount is **\$15** for Defense Loans.

If a borrower has both Defense and NDSL or Perkins Loans from one or more schools and the total monthly repayment is less than \$30 and the monthly repayment on a Defense Loan is less than \$15, the amount applied to the Defense Loan may not exceed \$15.

Use of Fixed Repayment Dates

For collection and bookkeeping purposes, a fixed repayment date is preferred. Otherwise, if the borrower is entitled to a deferment, the school may have problems computing payments due.

Hardship Payment Reduction

A school may reduce a borrower's scheduled payments for up to one year at a time if the borrower is scheduled to pay the \$40 minimum monthly payment and the school determines that the borrower is unable to make the scheduled payments due to hardship, such as prolonged illness or unemployment.

Paying Interest During Forbearance Period

Unlike deferment, interest continues to accrue during any period of forbearance. The borrower may request to pay interest as it accrues during periods of forbearance, but the school *may not* require the borrower to do so.

Hardship forbearance

A school must grant forbearance if the total amount the borrower is obligated to pay monthly on all FSA loans is equal to or greater than 20% of the borrower's total monthly gross income. Total monthly gross income is the gross amount of income received by the borrower from employment (either full-time or part-time employment) and from other sources.

To make this comparison and receive forbearance for hardship, the borrower must submit at least the following documentation:

- ♦ evidence of the amount of the borrower's most recent total monthly gross income,
- and
- ♦ evidence of the amount of the monthly payments the borrower owes for the most recent month on his or her FSA loans.

Calculating Equivalent Monthly Payment (Hardship Forbearance)

If the borrower's loan payments are due less frequently than monthly, a proportional share of the payments is used to determine the equivalent in total monthly payments. For example, if a payment is due quarterly, divide the amount by three (because the payment covers three months) to determine the equivalent monthly payment amount.

Forbearance Forms

The Department has issued OMB-approved forbearance forms for use in the Perkins, Direct Loan, and FFEL programs. Only the OMB-approved "Mandatory Forbearance" form may be provided to Perkins borrowers requesting forbearance due to student loan debt burden. Only the OMB-approved "General Forbearance" form may be provided to Perkins borrowers requesting forbearance due to poor health or for other acceptable reasons.

Repayment period extension

34 CFR 674.33(c)

Forbearance

34 CFR 674.33(d)

HEOA 464, HEA 464(e)

April 3, 2020 Electronic Announcement

Reduction of payments during hardship

34 CFR 674.33(b)(5) & (6)

Extension of repayment during hardship

34 CFR 674.33(c)(1)

Low-Income Individual

The school must use the Income Protection Allowance (published annually by ED in the Federal Register, usually in May) to determine whether a student is a low-income individual.

Based on the most recent Income Protection Allowance tables (June 2020, applicable for 2021-2022)

- an unmarried borrower without dependents qualifies as a *low-income individual* if his or her total income for the preceding calendar year did not exceed \$10,840.
- a borrower with a family that includes the borrower and any spouse or legal dependents qualifies as a *low-income individual* if his or her total family income for the preceding calendar year did not exceed the relevant amount below:

Family of 2	\$27,450
Family of 3	\$34,180
Family of 4	\$42,200
Family of 5	\$49,800
Family of 6	\$58,240

For each additional family member add \$6,580.

For more information, please see FR Vol. 85, No. 109 (June 5, 2020).

Enrollment Reporting Process

Perkins schools can receive student enrollment information through the NSLDS Enrollment Reporting Process. Schools should be accurately reporting enrollment every 60 days. It is the school's responsibility to make sure all loan statuses are reported accurately. Please refer to the NSLDS Reference Materials & Federal Perkins Technical Update dated 04-06-2012.

The NSLDS Student Site has been decommissioned, but NSLDS data is now accessible through the StudentAid.gov website. Students can add themselves to an enrollment roster via the StudentAid.Gov website.

DEFERMENT

Under certain circumstances, a borrower is entitled to have the repayment of a loan deferred. During deferment, the borrower is not required to pay loan principal, and interest does not accrue. After each deferment, the borrower is entitled to a post-deferment grace period of six consecutive months.

In most cases, the borrower must request deferment *unless* the borrower is engaged in service that may qualify for loan cancellation or the school can determine that the borrower is enrolled at least half-time at an eligible school. Borrowers are not required to request deferments in writing. However, a borrower who requests deferment must provide the school with **supporting documentation on an OMB-approved deferment form** by the school's deadline. Borrowers must immediately report any change in their deferment status to lending schools.

You may grant a deferment, at the borrower's request, based on information from the holder of an FSA loan that a borrower has been granted a deferment for the same reason and the same time period on the borrower's Perkins, Direct, or FFEL Stafford or PLUS Loan. (Holders of federal student aid loans include another Perkins school, an FFEL lender, the Department of Education, or a guaranty agency.) This simplified deferment granting process is optional and only applies to in-school deferments, graduate fellowship deferments, rehabilitation training program deferments, unemployment deferments, economic hardship deferments, military service deferments, and active duty student deferments.

If a borrower is currently in deferment, the school must reaffirm continued eligibility for deferment on at least an annual basis (except for Peace Corps service). Schools may not include periods of deferment in the 10-year repayment period.

Perkins Deferment

34 CFR 674.34-38

Concurrent deferment/cancellation

Schools must automatically defer loans during periods when the borrower is performing service that will qualify him or her for loan cancellation. Borrowers do not need to apply for concurrent deferment. Schools may grant concurrent deferment for up to 12 months at a time. Concurrent deferment is available to all loans made under the Federal Perkins Loan Program, regardless of disbursement date and contrary provisions on the promissory note.

A borrower who receives concurrent deferment is also entitled to a post-deferment grace period of six consecutive months. Therefore, regardless of the length of time that the eligible service is performed, repayment is deferred during that period of service and does not resume until six months after the cessation of service.

Deferment and default

A borrower is not entitled to a deferment on a defaulted loan. If the borrower signs a new repayment agreement, however, a school may grant a deferment even if the school has accelerated the loan. The school must undo the loan acceleration before granting the deferment. A borrower must file for deferment by a deadline the school sets and provide satisfactory documentation that he qualifies for the deferment. Before granting a deferment on a defaulted loan, the school may require the borrower to pay immediately late fees, collection costs, and some or all of the amount past due as of the date on which the school determined that the borrower had demonstrated eligibility for a deferment. The Department encourages schools to require the borrower to do so, thus “curing” the default.

A school is not required to grant deferments on loans in default. However, if a school does so, it is expected to calculate past due accrued interest. If a school believes this is too burdensome, it may deny deferments on defaulted loans.

“Regular” Student for deferment requirement

A Perkins borrower must be a “regular student” enrolled at least half-time at an eligible school in order to qualify for an in-school deferment on a Perkins Loan.

Students who are merely auditing classes are NOT eligible for in-school deferments. When courses are taken for academic credit, there is the potential that they could be applied to a degree or certificate program at some point or serve as required prerequisites for some future anticipated degree program. Students who are auditing classes are not usually subject to the same academic requirements, receive neither credits or grades, and are not able to apply those courses toward a degree. For more on regular student requirements, see Volume 1, *Student Eligibility*.

Maintaining in-school enrollment status vs. in-school deferment

When a student borrower graduates or leaves school and subsequently reenrolls at another school before the initial grace period expires, he or she retains in-school enrollment status and does not expend the nine-month initial grace period. A borrower is entitled to a full initial grace period, the remainder of which may come when he or she ceases half-time enrollment in the new program.

The borrower may submit proof at any time—even after a loan has been accelerated—that he or she reenrolled at least half-time before the initial grace period expired. Upon receipt of this proof, the school must recalculate the first date of repayment. The school must also deduct from the loan balance any interest accrued and any late charges added before the date the repayment period actually should have begun. Note that the borrower remains responsible for payments that would have been due under the recalculated repayment period and that the school is not obligated to grant a deferment for any payments past due under that period.

If a Perkins borrower graduates or leaves school and reenrolls at least half-time in an eligible postsecondary school *after* the initial grace period has expired, the student loses in-school enrollment status. However, the student may be eligible for an in-school *deferment* (see below). Keep in mind that a post-deferment grace period is only six months. In this case, schools exercising the minimum monthly payment provision listed in the promissory note must cease doing so and grant a deferment to cover any period of qualifying service/enrollment. The amount to be deferred and subsequently canceled must be calculated using the 10-year repayment period.

Deferments for All Perkins Loans, NDSLs, and Defense Loans

The deferments that follow are available to all loans made under the Federal Perkins Loan Program, regardless of disbursement date or contrary provisions in the promissory note.

In-school deferment

A borrower may defer repayment of a Perkins Loan if he or she is enrolled at least half-time in an eligible school. To receive an in-school deferment for a Perkins Loan, the borrower must be enrolled as a regular student in an eligible institution of higher education or a comparable institution outside the United States approved by the Department for deferment purposes. A regular student is one who is enrolled for the purpose of obtaining a degree or certificate. The eligible institution need not participate in the Federal Perkins Loan Program.

If the borrower is attending at least half-time as a regular student for a full academic year and intends to do so in the next academic year, he or she is entitled to a deferment for **12 months**. This means that a school must continue to apply the in-school deferment through the summer session, even if the borrower does not attend classes during the summer session. In-school deferment ends on the day the borrower graduates or drops below half-time enrollment.

Schools may grant in-school deferments to borrowers based on student enrollment information provided by third-party servicers or other schools. The enrollment information must establish that the bor-

rower is enrolled as a regular student on at least a half-time basis. If a school grants deferment based on this information, the school must notify the borrower of the deferment and offer the option to cancel the deferment and continue repayment of the loan. If a borrower is attending a school that ceases to qualify as an institution of higher education, the borrower's deferment ends on the date the school ceases to qualify.

Graduate fellowship deferment

A borrower may defer repayment if he or she is enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Department, including graduate or postgraduate fellowship-supported study (such as a Fulbright grant) outside the United States. To qualify for a deferment for study as part of a graduate fellowship program, a borrower must provide the lending institution with a statement from an authorized official of the borrower's graduate fellowship program certifying:

- that the borrower holds at least a baccalaureate degree conferred by an institution of higher education;
- that the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and
- the borrower's anticipated completion date in the program.

An eligible graduate fellowship program is a fellowship program that provides sufficient financial support to graduate fellows to allow for full-time study for at least six months; requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support; requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and, in case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

Required Official Deferment Forms

The Department has issued OMB-approved deferment forms for use in the Perkins, Direct Loan, and FFEL programs. Only the OMB-approved deferment forms may be provided to Perkins borrowers requesting the following deferments:

- In-school, Graduate fellowship, Rehabilitation training program, Unemployment, and Economic hardship.
- The latest version of the Military Service Deferment form is available in DCL GEN-17-03, on the Knowledge Center
- Cancer Treatment Deferment forms are included in the August 22, 2019 EA on IFAP: <https://fsapartners.ed.gov/electronic-announcements/082219deferercancertreatdlffelperklnprgmbor>

Rehabilitation training deferment

A borrower may defer repayment if he or she is enrolled in a course of study that is part of a Department-approved rehabilitation training program for disabled individuals. To receive this deferment, the borrower must provide the school with certification that:

- the borrower is receiving, or is scheduled to receive, rehabilitation training from the agency;
- the agency is licensed, approved, certified, or otherwise recognized by a state agency responsible for programs in vocational rehabilitation, drug abuse treatment, mental health services, or alcohol abuse treatment; or by the Department of Veterans Affairs; and
- the agency provides or will provide the borrower rehabilitation services under a written plan that (1) is individualized to meet the borrower's needs (2) specifies the date that services will end and (3) is structured in a way that requires substantial commitment from the borrower.

A substantial commitment from the borrower is a commitment of time and effort that would normally prevent the borrower from holding a full-time job either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

Rehab deferment

34 CFR 674.34(g)

Seeking full-time employment deferment

A borrower may defer repayment on a Perkins Loan for up to three years, regardless of disbursement date and contrary provisions on the promissory note, if the borrower is seeking and unable to find full-time employment. Forms for requesting deferment are available on the Knowledge Center.

Peace Corps Deferment

If the borrower is currently in economic hardship deferment for service in the Peace Corps, the school may grant deferment for the full term of the borrower's service, not to exceed three years, or for the remaining period of economic hardship deferment eligibility, if it is less than the remaining period of service.

Economic hardship deferment

A borrower is entitled to an economic hardship deferment for periods of up to one year at a time, not to exceed three years cumulatively, if the borrower provides the school with satisfactory documentation showing one of the following:

- the borrower has been granted an economic hardship deferment for either a Stafford or PLUS Loan for the same period of time for which the Perkins Loan deferment has been requested;
- the borrower is receiving federal or state general public assistance, such as Temporary Assistance to Needy Families, Supplemental Security Income, or Supplemental Nutrition Assistance Program (SNAP);
- the borrower is working full-time¹ and is earning a total monthly gross income that does not exceed (1) the monthly earnings of someone earning the minimum wage, or (2) 150% of the poverty line² for the borrower's family size;
- the borrower is serving as a volunteer in the Peace Corps. Schools may grant deferments for Peace Corps service for periods longer than one year at a time, but these periods must not collectively exceed three years for any individual.³

The deferment provision for borrowers whose debt burden exceeds 20% of total monthly gross income has been eliminated.

¹ A borrower is considered to be working full-time if he or she is expected to be employed for at least three consecutive months for at least 30 hours per week.

² The poverty guidelines are published annually by the Department of Health and Human Services. If a borrower is not a resident of a state identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous states.

³ To qualify for a *subsequent* period of deferment that begins less than one year after the end of the deferment described in option three, the borrower must submit a copy of his or her federal income tax return if the borrower filed a tax return within the eight months preceding the date the deferment is requested.

Determining maximum monthly gross income and 150% of poverty line

The current hourly minimum wage is available at dol.gov/general/topic/wages/minimumwage

To find monthly gross income, multiply the minimum wage by the typical work hours in a year, and then divide this amount by 12 months. Annual poverty line guidelines, as defined by Section 673(2) of the Community Service Block Grant Act, are available at <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references>.

Note that an unborn child may be included (in family size) if that child will be born during the year the borrower certifies family size or for the period the borrower requests an economic hardship deferment.

Military service deferment

A borrower who is serving on active duty in the U.S. Armed Forces or performing qualifying National Guard duty may defer repayment (principal and interest) on a Perkins Loan if the duty is in connection with a war, military operation, or national emergency.

The deferment is extended 180 days for qualifying periods of service that include October 1, 2007, or that begin on or after that date. This additional period is available each time a borrower is demobilized at the conclusion of qualifying service. This additional 180-day deferment may not be granted without documentation supporting the borrower's claim of end-of-military-service date.

A borrower may not be reimbursed for any payments made by or on behalf of a borrower during a period for which the borrower qualified for a deferment. For more detail, see 34 CFR 674.34(h).

13-month post-active Guard/Reserve duty deferment

Effective October 1, 2007, borrowers who are members of National Guard or Armed Forces Reserve, and members of the Armed Forces who are in retired status, are eligible for a 13-month period of deferment on repayment of their Perkins Loans following the completion of their active duty military service if they were enrolled in a postsecondary school at the time of, or within six months prior to, their activation. Reserve or retired members of the Armed Forces may qualify for both the post-active duty deferment and for the military service deferment, and may receive both deferments if eligible. If a student receives both deferments, the overlapping periods of deferment will run concurrently.

A borrower returning from active duty who is in a grace period is not required to waive the grace period to use the 13-month post-active duty student deferment. If the borrower reenrolls in post-secondary school (at least half-time) prior to the expiration of the 13-month period, the deferment ends on the date the student reenrolls.

Unlike the military service deferment described above, students receiving the active duty student deferment need not be activated in connection with a war, national emergency, or other military operation.

For purposes of the post-active duty student deferment, “active duty” has the same meaning as in Section 101(d)(1) of Title 10, United States Code, but does not include active duty for training or attendance at a service school/academy.

Members of the National Guard may qualify for this deferment for Title 32 full-time National Guard duty under which a governor is authorized, with the approval of the President or Secretary of Defense, to order a member to state active duty and the activities of the National Guard are paid for by federal funds; or for state active duty under which a governor activates National Guard personnel based on state statute or policy, and the activities of the National Guard are paid for by state funds.

Active duty does not include a borrower who is serving full-time in a permanent position with the National Guard, unless the borrower is reassigned as part of a call-up to active duty service. For more detail on this deferment, see 34 CFR 674.34(i).

Deferments for Older Perkins Loans (34 CFR 674.35, 674.36, and 674.37)

For information on deferment provisions exclusive to loans made before October 1, 1980, see 34 CFR 674.37.

For information on deferment provisions exclusive to loans made before July 1, 1993, see the 2015–2016 Federal Student Aid Handbook.

Cancer Treatment Deferment

A borrower may receive deferment on a qualifying Perkins Loan while the borrower is receiving cancer treatment (for an unlimited period of time) and for six months following the conclusion of the treatment. A qualifying Perkins Loan is a Perkins Loan that had entered repayment on or before September 28, 2018. Loans that were made before September 28, 2018 that were in an in-grace or an in-school status are not eligible for the deferment and will not become eligible when they do enter repayment unless consolidated.

For more information on the Cancer Treatment Deferment, see the “Deferment for Cancer Treatment for Direct Loan, FFEL, and Perkins Loan Program Borrowers” Electronic Announcement of August 22, 2019.

GENERAL CANCELLATION PROVISIONS

Application for cancellation

The following cancellation application procedures apply to any loan under this program.

The borrower applies for cancellation of his or her loan by obtaining the appropriate cancellation form from the business or student loan office of the school that made the loan (or from the school’s billing service, if it uses one). The borrower submits the form to the school, along with any supporting documentation the school requests, by the deadline the school establishes.

A school must determine, based on the borrower’s documentation, whether the borrower is entitled to have any portion of his or her loans cancelled. This responsibility cannot be delegated. For information on documentation, see the appropriate cancellation category in this section.

Concurrent deferment

Schools must automatically defer loans during periods of service for which schools also grant loan cancellation. Borrowers do not need to apply for these automatic deferments.

ED reimbursement to schools

The Department reimbursed institutions for the institutional share of Perkins Loan Service Cancellations from the Perkins Fund, as described in the Electronic Announcement *Federal Perkins Loan Revolving Fund Distribution of Assets Timeline for 2020-21 and Reimbursement for Perkins Loan Service Cancellations*, published on October 20, 2020. Institutions will receive notification through the Distribution of Assets process the amount of service cancellation the institution is permitted to remove from the Revolving Fund, provided there is enough cash in the Fund to cover the reimbursement.

Perkins Cancellation

34 CFR 674 Subpart D	Defaulted loans
34 CFR 674.51-62	34 CFR 674.52(d)
Special definitions: 34 CFR 674.51	AmeriCorps (National Community Service)
Procedures: 34 CFR 674.52	34 CFR 674.52(f)

Break in service due to a condition covered by the Family and Medical Leave Act (FMLA)

A borrower who is unable to complete an academic year of eligible teaching service due to a condition covered under the FMLA may still qualify for a cancellation if the borrower completes at least one half of the academic year, and the borrower's employer considers the borrower to have fulfilled the contract requirements for the academic year for purposes of salary increases, tenure, and retirement. For a cancellation type that requires 12-consecutive months of eligible service, a borrower who is unable to complete the year of eligible service due to a condition covered under the FMLA may still qualify for the cancellation if the borrower completes at least 6 months of eligible service.

CANCELLATION RESTRICTIONS

Prior service and payments prior to cancellation

Schools may not cancel any portion of a loan for services the borrower performed either before the date the loan was disbursed or during the enrollment period covered by the loan. Schools may not refund payments made during a period for which the borrower qualified for a cancellation, unless the borrower made the payment because of the school's error. To reduce the chance of error, a school should keep the borrower informed of any new cancellation benefits.

Defaulted loans

A school may cancel a defaulted loan if the only reason for the default was the borrower's failure to file a cancellation request on time. If the loan has already been accelerated, only eligible service performed prior to the date of acceleration can be considered for cancellation. A borrower is not entitled to cancellation for any eligible service performed after the date of acceleration.

AmeriCorps recipients

Schools may not grant cancellation of a Perkins Loan or National Direct Student Loan to a borrower who has received a national service education award for volunteer service with AmeriCorps (Subtitle D of Title I of the National and Community Service Act of 1990).

Cancellation restrictions

Prior service

34 CFR 674.62(a)

Payment refund

34 CFR 674.62(b)

ELEMENTARY AND SECONDARY TEACHER CANCELLATION

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full-time in a public or private nonprofit elementary or secondary school system as:

- ♦ a teacher in a low-income school or a low-income educational service agency;
- ♦ a teacher in a teacher shortage field, including mathematics, science, foreign languages, or bilingual education or any other field of expertise that is determined by a state education agency to have a shortage of qualified teachers in that state; or
- ♦ a special-education teacher, including teachers of infants, toddlers, children, or youth with disabilities.

The cancellation form that the borrower files must be signed by an official in the school system or agency to certify the borrower's service. Eligibility for teacher cancellation is based on the duties presented in an official position description, not on the position title. To receive a cancellation, the borrower must be directly employed by the school system.

To qualify for cancellation based on any of these three conditions, a borrower must teach full-time for a complete academic year or its equivalent. See below for exceptions covering special cases, such as illness or pregnancy.

Cancellation for teaching in a low-income school or educational service agency

A borrower qualifies for this cancellation by teaching full-time in a low-income public or other nonprofit elementary or secondary school, or by teaching full-time for an *educational service agency* (ESA) listed in the *Teacher Cancellation Low-Income Directory*.

For cancellation purposes, a borrower employed by an ESA may be teaching:

- ♦ at a location operated by the ESA (such as a stand-alone school that serves students from many different school districts), or
- ♦ in a conventional elementary and secondary school (such as a vocational education teacher employed by the ESA to teach courses in several different secondary schools).

If a borrower is teaching at a school that is on the list one year but not in subsequent years, the borrower may continue to teach in that school and remain eligible to receive a cancellation for service in that school.

Cancellation for teaching in a teacher shortage field

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins Loan for a full-time teacher in a field of expertise that is determined by a state education agency to have a shortage of qualified teachers in that state. A borrower who is teaching in science, mathematics, foreign language, or bilingual education qualifies for cancellation even if the state has not designated the subject area in which he or she is teaching as a shortage area.

For a borrower to be considered as teaching in a field of expertise that has a shortage of teachers, the majority of classes taught must be in that field of expertise.

Cancellation for teaching in special education

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins Loan for a full-time special education teacher of infants, toddlers, children, or youth with disabilities. The teaching service must be performed in a public or other nonprofit elementary or secondary school system.

A person performing one of the following services is considered a teacher if the service is part of the educational curriculum for handicapped children:

- ♦ speech and language pathology and audiology;
- ♦ physical therapy;
- ♦ occupational therapy;
- ♦ psychological and counseling services; or
- ♦ recreational therapy

To qualify for cancellation, the borrower must be licensed, certified, or registered by the appropriate state education agency for that area in which he or she is providing related special educational services.

Teacher cancellation

34 CFR 674.53

Teacher definition 34 CFR 674.51(y).

Academic year definition 34 CFR 674.51(a)

Part-time 34 CFR 674.52(b)(1)

Low-income schools 34 CFR 674.53(a)

Teaching children & adults 34 CFR 674.53(f)

Field of expertise 34 CFR 674.53(c)

Special education 34 CFR 674.53(b)

Teacher Cancellation Directory

You can identify schools and educational service agencies that are eligible for Perkins deferment and cancellation by searching the *Teacher Cancellation Low-Income Directory* online at: **StudentLoans.gov**.

Information about the compilation and publication of the directory is available from **COD School Relations Center** at: **800-848-0978**.

Customer service representatives are available Monday through Friday from 8 a.m. until 11 p.m. (ET). You may also email the center at: **CODSupport@ed.gov**.

Cancellations for Teachers at Educational Service Agencies

Definition of *educational service agency*: A regional public multi-service agency authorized by state law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended. HEA sections 481(e) and (f)

Defining Children and Youth with Disabilities

For children and youth from ages 3 through 21 who require special education and related services because they have disabilities as defined in Section 602(3) of the Individuals with Disabilities Education Act (the Act), the Act defines a “child with a disability” as one (1) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (2) who, by reason thereof, needs special education and related services.

For a child age three through nine, the term a “child with a disability” may include, at the discretion of a state and local education agency, individuals (1) experiencing developmental delays, as defined by the state and as measured by appropriate instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) who, by reason thereof, require special education and related services.

Cancellation Rates for Military, Teachers AND Public Servants

With the exception of the early childhood education and volunteer service cancellations, the cancellation rate per completed year of qualifying full-time service is:

- first and second years: 15% of the original principal loan amount, plus the interest that accrued during the year;
- third and fourth years: 20% of the original principal loan amount, plus the interest that accrued during the year; and
- fifth year: 30% of the original principal loan amount, plus any interest that accrued during the year.

A “year of service” consists of 12 consecutive months of service, except for teaching service, where the borrower must teach full-time for a full academic year or its equivalent. For cancellation rates for early childhood education and volunteer service, please see the corresponding sections in this chapter.

BIA Schools

All elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) are considered to qualify as schools serving low-income families for the purpose of teacher cancellations of Perkins Loans. Elementary and secondary schools operated on reservations by Indian tribal groups under contract with the BIA are also considered to qualify for this purpose. For more detail, see 34 CFR 674.53(a)(5)

Employment Cancellations

Definitions 34 CFR 674.51

Employment cancellations 34 CFR 674.56

- Nurse or medical technician (a), Child or family services agency (b)
- Early intervention (disability) services (c), Firefighter (d)
- Faculty at tribal college or university (e), Librarian with master’s degree at Title I school (f), or Speech pathologist with master’s degree at Title I school (g)

Law enforcement 34 CFR 674.57; Early Childhood Education 34 CFR 674.58

Military service 34 CFR 674.59; Volunteer service 34 CFR 674.60

Cancellation reimbursement: 34 CFR 674.63(b), GEN-05-15, Sec. 465(a)(2)(I) of the HEA

Who Is a Teacher?

For Perkins cancellation purposes, a teacher is a person who provides students direct classroom teaching, classroom-type teaching in a non-classroom setting, or educational services directly related to classroom teaching (e.g., school librarian, guidance counselor).

It is not necessary for a teacher to be certified or licensed to receive cancellation benefits. However, the employing school must consider the borrower to be a full-time professional for the purposes of salary, tenure, retirement benefits, and so on. In other words, to qualify, the borrower should accrue the same benefits as teachers who are licensed and/or certified. A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

Under certain conditions, a teacher's aide may be considered eligible for teacher cancellation. The teacher's aide must meet the definition of a "full-time teacher." He or she must have a bachelor's degree and be a professional recognized by the state as a full-time employee rendering direct and personal services in carrying out the instructional program of an elementary or secondary school.

Volunteer teachers are not professionally employed on a full-time basis and, therefore, are not eligible for teacher cancellation benefits.

Teaching full-time for a full academic year

To earn the Perkins teacher cancellation, the borrower must teach full-time for a full academic year or its equivalent. There is no requirement that a teacher must teach a given number of hours a day to qualify as a full-time teacher; the employing school is responsible for determining whether or not the individual is considered to be a full-time teacher. An "academic year or its equivalent" for teacher cancellation purposes is defined as one complete school year. Two half-years count as an academic year if they are complete, consecutive, from different school years (excluding summer session), and generally fall within a 12-month period.

A borrower who cannot complete the academic year because of illness or pregnancy may still qualify for cancellation if he or she has completed the first half of the academic year and has begun teaching the second half, as long as the borrower's employer considers the borrower to have fulfilled his or her contract for the academic year.

Teaching part-time at multiple schools

Schools must grant cancellation to a borrower who is simultaneously teaching part-time in two or more schools *if* an official at one of the schools where the borrower taught certifies that the borrower taught full-time for a full academic year. For example:

- under a consortium agreement, a borrower may be employed by the consortium and teach at member schools;
- two or more schools, by mutual agreement, could arrange to have one school employ the borrower on a full-time basis and then hire out his or her services to the other school(s) involved in the agreement; or
- a borrower can be considered to have been a full-time teacher for an academic year if he or she can obtain appropriate certifications that he or she has taught in half-time teaching positions for a complete academic year in two elementary schools, two secondary schools, or a combination of the two school levels.

A school may refuse cancellation for simultaneous teaching in two or more schools if it cannot easily determine that the teaching was full-time.

Who Is a Teacher? (Continued)

Requirements for teacher cancellation in a private school

A borrower may receive teacher cancellation for services performed in a private elementary or secondary school or academy, if the private school or academy has established its nonprofit status with the Internal Revenue Service (IRS) and if the school or academy is providing elementary or secondary education according to state law. The school or academy does not necessarily need to be accredited for a borrower teaching there to qualify for teacher cancellation.

Teaching in a school system required

To be eligible for cancellation, a borrower employed in a public or other nonprofit elementary or secondary school system or an educational service agency must be directly employed by the school system.

Preschool or pre-kindergarten program requirements for teacher cancellation

A borrower may receive teacher cancellation for teaching service performed in a preschool or pre-kindergarten program if the state considers the program to be a part of its elementary education program. A low-income-school-directory designation that includes pre-kindergarten or kindergarten does not suffice for a state determination of program eligibility. The school must check with the state superintendent of public instruction to determine whether these programs are part of the state elementary education program.

Teaching both children and adults

If the borrower teaches both children and adults, the majority of students must be children for the borrower to qualify for cancellation.

Job Corps requirements for teacher cancellation

Teaching service performed in a Job Corps project does not qualify for Perkins Loan cancellation unless the teaching is conducted in an elementary or secondary school or school system.

How are low-income schools and ESAs selected?

The Department selects elementary/secondary schools and educational service agencies (ESAs) for inclusion in the *Teacher Cancellation Low-Income Directory* in consultation with each state's educational agency based on these criteria:

- The school or ESA is in a school district that qualifies for "Title I" federal funding based on the large number of low-income families in the district; and
- More than 30% of the school's or ESA's enrollment is made up of children from low-income families.

PUBLIC SERVICE CANCELLATIONS

Nurse or medical technician cancellation

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full time as a *nurse* or *medical technician* providing health care services. The borrower must provide health care services *directly* to patients. For purposes of this cancellation,

- ♦ a *nurse* is a licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate state agency to provide nursing services.
- ♦ a *medical technician* is an allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate state agency in the state in which he or she provides health care services; an allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system. See Dear Colleague Letter CB-08-14 for a more detailed discussion of the eligibility requirements for the medical technician cancellation.

A school may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full time for a full year.

Nurse or medical technician Perkins cancellation

Dear Colleague Letter CB-08-14

Firefighter cancellation

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins Loan for service that includes August 14, 2008, or begins on or after that date, as a full time firefighter.

A firefighter is an individual who is employed by a federal, state, or local fire fighting agency to extinguish destructive fires or provide fire-fighting related services such as conducting search and rescue, providing hazardous materials (HAZMAT) mitigation, or providing community disaster support and, as a first responder, providing emergency medical services.

Firefighter cancellation

34 CFR 674.56(d)

Child or family services cancellation

A school must cancel up to 100% of the outstanding balance on a Perkins Loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency. To qualify for cancellation, the borrower must be providing services directly and exclusively to *high-risk children* from *low-income communities* and to the families of these children, or supervising the provision of such services. Any services provided to the children's families must be secondary to the services provided to the children.

For purposes of this cancellation, *high-risk children* are defined as individuals under the age of 21 who are low-income or at risk of abuse or neglect; have been abused or neglected; have serious emotional, mental, or behavioral disturbances; reside in placements outside their homes; or are involved in the juvenile justice system. For purposes of this cancellation, *low-income communities* are communities in which there is a high concentration of children eligible to be counted under Title I rules.

The types of services a borrower may provide to qualify for a child or family service cancellation include child care and child development services; health, mental health, and psychological services; and social services. The Department has determined that an elementary or secondary school system, a hospital, or an institution of higher education is not an eligible employing agency. When reviewing child or family service cancellation requests, Perkins schools and their servicers should refer to Dear Colleague Letter GEN-5-15, which provides a more detailed discussion of the eligibility requirements for child or family service cancellations.

Faculty member at a tribal college or university cancellation

An institution must cancel up to 100% of the outstanding balance on a borrower's Federal Perkins Loan for service that includes August 14, 2008, or begins on or after that date, as a full time faculty member at a Tribal College or University.

Title 1 school speech pathologist cancellation

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins Loan for full-time employment that includes August 14, 2008, or begins on or after that date, as a speech pathologist. A speech pathologist is someone who evaluates or treats disorders that affect a person's speech; language; cognition; voice; swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both; and who has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration (excluding a doctorate or professional degree). To qualify for

cancellation, the speech pathologist must have a master's degree and be working exclusively with Title I–eligible schools.

Speech pathologist cancellation

34 CFR 674.56(g)

Librarian cancellation (in support of Title I school)

A school must cancel up to 100% of the outstanding Perkins balance for service that includes August 14, 2008, or begins on or after that date, as a full-time librarian. The librarian must have a master's degree. A *librarian with a master's degree* is defined as an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration (excluding a doctorate or professional degree). The librarian must be employed:

- ♦ in an elementary school or secondary school that is eligible for Title I assistance, or
- ♦ by a public library that serves a local school district that contains one or more Title I-eligible schools.

Librarian cancellation

34 CFR 674.56(f)

LAW ENFORCEMENT CANCELLATIONS

Law enforcement or corrections officer cancellation

A school must cancel up to 100% of a Perkins Loan made on or after November 29, 1990, if the borrower performs full-time service for 12 consecutive months as a law enforcement or corrections officer for an eligible employing agency.

To establish the eligibility of a borrower for the law enforcement or corrections officer cancellation provision, the school must determine that (1) the borrower's employing agency is eligible and that (2) the borrower's position is essential to the agency's primary mission.

A local, state, or federal agency is an eligible employing agency if it is publicly funded and its activities pertain to crime prevention, control, or reduction, or to the enforcement of the criminal law. Such activities include but are not limited to:

- ♦ police efforts to prevent, control, or reduce crime or to apprehend criminals;
- ♦ activities of courts and related agencies having criminal jurisdiction;
- ♦ activities of corrections, probation, or parole authorities; and
- ♦ the prevention, control, or reduction of juvenile delinquency or narcotic addiction.

Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible. However, because the activities of many divisions and bureaus within local, state, and federal agencies pertain to crime prevention, control, or reduction, or to the enforcement of criminal law, a sub-unit within a larger, non law enforcement agency may qualify as a law enforcement agency for purposes of a law enforcement cancellation.

For the borrower's position to be considered essential to the agency's primary mission, he or she must be a full-time employee of an eligible agency and a sworn law enforcement or corrections officer or person whose principal responsibilities are unique to the criminal justice system and are essential in the performance of the agency's primary mission. The agency must be able to document the employee's functions.

Examples of positions that are considered essential to a law enforcement agency's primary mission and that are unique to the criminal justice system include prosecuting attorneys whose primary responsibilities are to prosecute criminal cases on behalf of law enforcement agencies, forensic scientists, and latent fingerprint examiners.

Individuals whose official responsibilities are supportive, such as those that involve typing, filing, accounting, office procedures, purchasing, stock control, food service, transportation, building, equipment, or grounds maintenance are not eligible for the law enforcement or correction officer loan cancellation, regardless of where these functions are performed.

Law Enforcement Cancellation for Loans Prior to November 29, 1990

A school must cancel up to 100% of the outstanding loan balance on a Perkins Loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note. The service must be full time and be performed over 12 consecutive months.

Law enforcement/corrections cancellation

34 CFR 674.57(a)

PUBLIC DEFENDER CANCELLATION

Full-time attorneys employed in *federal public defender organizations* or *community defender organizations* are eligible for public defender cancellations.

For purposes of this cancellation,

- ♦ a *community defender organization* is a defender organization established in accordance with section 3006A(g)(2)(B) of Title 18, United States Code.
- ♦ a *federal public defender organization* is a defender organization established in accordance with section 3006A(g)(2)(A) of Title 18, United States Code.

Cancellations are for eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expansion of this cancellation category appears on the borrower's promissory note.

Eligible public/community defender organizations

You can find a list of eligible federal public defender and community defender organizations at: fd.org/sites/default/files/cja_resources/defenderdir.pdf. For more detail, see 34 CFR 674.51(e) and Section 3006A(g)(2) of Title 18, U.S.C.

Public defender cancellation

34 CFR 674.57(b)

MILITARY SERVICE CANCELLATION

A school must cancel up to 100% of the outstanding balance of a Perkins Loan for a full year of active duty service in the U.S. Armed Forces in an *area of hostilities* or an *area of imminent danger* that qualifies for special pay. The “U.S. Armed Forces” are the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

Areas that qualify for hostile fire/imminent danger pay are listed on the Web. Note that the borrower does not have to serve the full 12 months of active duty service in such an area to qualify for the cancellation. If a borrower is on active duty in such an area for any part of a month, that month counts toward the borrower’s eligibility for a military cancellation.

The cancellation rate is the standard progression for up to 100% cancellation: 15% for the first and second year of qualifying service, 20% for the third and fourth year of qualifying service, and 30% for the fifth year of qualifying service. The year of qualifying service must include August 14, 2008, or begin on or after that date.

The borrower’s commanding officer must certify the borrower’s service dates. Active duty service for less than a complete year or a fraction of a year beyond a complete year does not qualify. A complete year of service is 12 consecutive months.

Military cancellations for earlier loans

- A school must cancel up to 50% of a Defense loan made after April 13, 1970, for the borrower’s full-time active service starting after June 30, 1970, in the U.S. Armed Forces.
- A school must cancel up to 50% of the outstanding balance on a Perkins Loan for active duty service that ended before August 14, 2008, as a member of the U.S. Armed Forces in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code (see below).

The cancellation rate is 12.5% of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

Military service Perkins cancellation

34 CFR 674.59

EARLY CHILDHOOD EDUCATION CANCELLATION (PRE-KINDERGARTEN, CHILD CARE, HEAD START)

A school must cancel up to 100% of a Perkins Loan if the borrower has served as a *full-time staff member* in a *Head Start* program, or as a *full-time staff member* of a *pre-kindergarten* or *child care program* that is licensed or regulated by the state. For purposes of these early education cancellations,

- ◆ *Head Start* is a preschool program carried out under the Head Start Act (subchapter B, chapter 8 of Title VI of Pub. L. 97–35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809(a)(1)).
- ◆ *pre-kindergarten program* is a state-funded program that serves children from birth through age six and addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development.
- ◆ *child care program* is a program that is licensed or regulated by the state and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents’ work.
- ◆ *full-time staff member* is someone who is regularly employed in a full-time professional capacity to carry out the educational part of the early education program.

When a borrower who is already receiving cancellation benefits becomes eligible for another type of cancellation

Perkins borrowers who become eligible for an additional cancellation category continue in the same cancellation progression if both categories are cancelled at the same rate.

However, if a borrower becomes eligible for a cancellation category with a different rate of progression, the borrower begins at the year-one cancellation rate for the new cancellation category. See 34 CFR 674.52(g)(2) for more detail.

For the pre-kindergarten and child care program cancellation, the period of service must include August 14, 2008, or begin on or after that date. In order to qualify for cancellation, the early education program in which the borrower serves must operate for a complete academic year or its equivalent. To be eligible for this cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the early education program.

The cancellation rate is 15% of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service for each complete academic year or its equivalent of full-time teaching service. An official of the early education program should sign the borrower's cancellation form to certify the borrower's service.

Early Education Cancellations for Defense Loans

Head Start. An institution must cancel up to 100% of the outstanding balance on a Defense Loan for service as a full-time staff member in a Head Start program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

Child or family services cancellation

34 CFR 674.56(b), 34 CFR 674.58

EARLY INTERVENTION (FOR DISABLED INFANTS/TODDLERS) CANCELLATION

Schools must cancel up to 100% of the outstanding balance on a Perkins Loan if the borrower has been employed full time as a *qualified professional provider of early intervention services* in a public or other nonprofit program. "Early intervention services" are provided to infants and toddlers with disabilities. This cancellation applies to Perkins Loans made on or after July 23, 1992. Perkins Loans made prior to that date are eligible for cancellation for early intervention service that is performed on or after October 7, 1998.

Early intervention cancellation

34 CFR 674.56(c)

Early Intervention Definitions

Infants and toddlers with disabilities

An individual under three years of age who needs early intervention services because the individual (1) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) has a diagnosed physical or mental condition, that has a high probability of resulting in developmental delay.

The term may also include, at a state's discretion, individuals under age three, who are at risk of having substantial developmental delays if early intervention services are not provided. See Section 632(5)(A) of the Individuals with Disabilities Education Act (IDEA).

Qualified professional provider of early intervention services

A provider of services, as defined in Section 632 of the Individuals with Disabilities Education Act. Section 632 of that act defines early intervention services as developmental services that:

- are provided under public supervision;
- are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;
- are designed to meet the developmental needs of an infant or toddler with a disability in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development;
- meet the standards of the state in which they are provided;
- are provided by qualified personnel, including special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians;
- to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
- are provided in conformity with an individualized family service plan adopted in accordance with Section 636 of the Individuals with Disabilities Education Act.

Under the Individuals with Disabilities Education Act, early intervention services include family training, counseling, and home visits; special instruction; speech-language pathology and audiology services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from the other early intervention services; social work services; vision services; assistive technology devices and services; and transportation and related costs necessary to enable infants, toddlers, and their families to receive other services identified in Section 632(4).

VOLUNTEER SERVICE CANCELLATION

Schools must cancel up to 70% of a Perkins Loan if the borrower has served as a Peace Corps or AmeriCorps VISTA (under Title I, Part A of the Domestic Volunteer Service Act of 1973) volunteer. An authorized official of the Peace Corps or AmeriCorps VISTA program must sign the borrower's cancellation form to certify the borrower's service.

AmeriCorps volunteers do not qualify for this cancellation unless their volunteer service is with AmeriCorps VISTA. An AmeriCorps VISTA volunteer may only qualify for this cancellation if the AmeriCorps VISTA volunteer elects not to receive a national service education award for his or her volunteer service. The AmeriCorps VISTA volunteer must provide appropriate documentation showing that the volunteer has declined the AmeriCorps national service education award.

Schools apply cancellation for volunteer service in the following increments:

- ◆ 15% of the original principal loan amount—plus any interest that accrued during the year—for each of the first and second 12-month periods of service, and
- ◆ 20% of the original principal loan amount—plus any interest that accrued during the year—for each of the third and fourth 12-month periods of service.

For Peace Corps Volunteers, the 12-month periods of service include any pre-enrollment training the volunteer receives at the Peace Corps post.

DISCHARGING PERKINS LOANS

Discharge due to death

A school must discharge the unpaid balance of a borrower's Defense, NDSL, or Federal Perkins Loan, including interest, if the borrower dies. The school must discharge the loan on the basis of the following:

- ◆ An original or certified copy of the death certificate;
- ◆ An accurate and complete photocopy of the original or certified copy of the death certificate;
- ◆ An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or
- ◆ Verification of the borrower's death through an authoritative Federal or State electronic database approved for use by the Department.

Under exceptional circumstances and on a case-by-case basis, the chief financial officer of your school may approve a discharge based upon other reliable documentation of the borrower's death.

Streamlined loan death discharge option:

The Department has analyzed information in NSLDS and determined that, because the first instance that a death discharge would have been based on reliable information (such as a death certificate), and because reporting quality to NSLDS is sufficient for this purpose, the Department could create a report identifying other outstanding loans for deceased students or borrowers. The NSLDS report is called the Death Status Conflict Report, which contains data showing when a death discharge has been applied to one loan for a student or borrower, but another loan remains outstanding. The specific loans identified in the report may be construed as automatically eligible for a death discharge without further documentation.

The Department encourages schools to use this report to discharge Perkins loans (and TEACH Grant service obligations) due to death and follow normal processes with respect to reporting and claim filing after using this report. It is important to note that only the loans that appear on the NSLDS Death Status Conflict Report are eligible for discharge.

Loan discharges due to death

34 CFR 674.61

Streamlined loan death discharge options

Electronic Announcement: LOANS-21-04

Discharge for service-connected disability (veterans)

A veteran's Perkins Loan will be discharged if the veteran is unemployable due to a service-connected disability, as determined by the Department of Veterans Affairs (VA). Beginning July 1, 2013, to qualify for discharge of a Perkins Loan based on a disability determination by the VA, a veteran must submit a completed copy of the Total and Permanent Disability (TPD) discharge application to the Department. The veteran does not need to obtain a physician's certification or provide documentation of eligibility for SSA disability benefits with the application. Instead, the veteran must include documentation from the VA showing that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to his or her disability.

If the Department determines that the documentation from the Department of Veterans Affairs indicates that the veteran meets the conditions for a service-related disability discharge, the Department

directs the school to discharge the loan. Schools are not required to assign the loan, because loans discharged based on VA disability documentation are not subject to the post-discharge monitoring period or to reinstatement.

The school must return to the sender any loan payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability. (Any such loan payments must be returned to the person who made them.)

If the Department determines that the documentation from the VA does not indicate that the veteran meets the conditions for the discharge, the Department directs the school to resume collection on the loan. The Department also notifies the veteran that the TPD discharge request has been denied and informs the veteran that even if he or she does not qualify for a service-connected disability discharge, the veteran may reapply for a TPD discharge if he or she meets the general definition of “totally and permanently disabled.”

Closed school discharge

Schools that close or otherwise lose Title IV eligibility are required to liquidate their Perkins portfolio and fund if they have an active portfolio (i.e., have not liquidated). Procedures for assignment and liquidation are posted on the Knowledge Center. FSA Collections may discharge a Perkins Loan made on or after January 1, 1986, if the borrower is unable to complete his or her program of study due to the closure of the school. The Debt Management and Collections System (DMCS) must reimburse borrowers for payments made voluntarily or by forced collection.

A borrower whose loan was in default and then discharged under this provision is not considered to have been in default and reestablishes FSA eligibility, provided he or she meets all other eligibility criteria. DMCS reports the discharge to the credit bureaus to which the previous loan status was reported. A borrower is also eligible for a closed school discharge if the borrower withdrew from the school not more than 120 days before the school closed (or longer in exceptional circumstances).

Closed School Search

Each week, the Department publishes a spreadsheet you can use to determine if one of your students has a loan from a school that might be eligible for a closed-school discharge. You can find the spreadsheet at:

www2.ed.gov/offices/OSFAP/PEPS/closedschools.html

Closed-School Discharge

34 CFR 674.33(g)

Discharge for spouses of victims of 9/11 attacks

Schools must discharge the outstanding balance of a Perkins Loan that was made to the spouse of an eligible public servant who died or became permanently and totally disabled due to injuries suffered in the September 11, 2001, terrorist attacks. An eligible public servant is a police officer, firefighter, or other safety or rescue personnel, or a member of the Armed Forces, who died or became permanently and totally disabled due to injuries suffered in the September 11, 2001, terrorist attacks. This discharge is only available on Perkins Loan amounts that were owed on September 11, 2001. The law doesn't authorize refunding of any payments made on a loan prior to the loan discharge date.

Bankruptcy discharge

The basic actions a school must take when a borrower files for bankruptcy protection are covered here, and further in Dear Colleague Letter GEN-95-40 (dated September 1995), in GEN-15-13 (dated July 2015), and in 34 CFR 674.49. For the best advice on how to proceed when a borrower files for bankruptcy protection, a school should consult its attorney. The school should ensure that the attorney is aware of the due diligence provisions that apply to school actions.

If a school receives notice that a borrower has filed for bankruptcy protection, it must immediately stop collection efforts (outside of the bankruptcy proceeding itself). If the borrower has filed under Chapter 12 or 13 of the Bankruptcy Code, the school must also suspend collection efforts against any endorser. The school must file a proof of claim in the bankruptcy proceeding unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states the borrower has no assets.

Effective for bankruptcies filed on or after October 8, 1998, a borrower who receives a general discharge in bankruptcy does not, by that order, obtain a discharge of a loan that has been in repayment for seven years or more at the time of the bankruptcy filing. For these bankruptcies, a student loan is discharged by a general discharge order only if the borrower also obtains a court ruling that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

Resuming or terminating billing and collection (bankruptcy proceedings)

A school must resume billing and collection procedures after the borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, 11 U.S.C. 1228, 11 U.S.C. 1328(a), or U.S.C. 1328(b) unless the court has found that repayment would impose an undue hardship. If the court has found that repayment would impose an undue hardship, the school must terminate all collection action and write off the loan. If a school receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Perkins Loan Fund.

Resuming billing and collection

34 CFR 674.49(f)

Bankruptcy laws and regulations

DCL GEN-15-13

11 U.S.C. 1307, 1325, and 1328(b) are laws applicable to bankruptcy cases in general, not just to Perkins Loan bankruptcy cases.

11 U.S.C. 1307 concerns the dismissal of a Chapter 13 case or the conversion of a case filed under Chapter 13 to a Chapter 7 proceeding.

11 U.S.C. 1325 concerns the confirmation by the court of a borrower's proposed repayment plan.

11 U.S.C. 1328(b) allows a debtor who fails to complete the payments required under the plan to obtain a discharge if conditions are met. A school should consult an attorney for the best advice in bankruptcy cases.

Bankruptcy Discharge Procedures

Responding to complaint for determination of dischargeability

Customarily, a borrower obtains a judicial ruling of undue hardship by filing an adversary proceeding—a lawsuit within the bankruptcy proceeding—in the bankruptcy court seeking to prove undue hardship. If a borrower files an adversary proceeding to prove undue hardship under 11 U.S.C. 523(a)(8), the school must decide, on the basis of reasonably available information, whether repayment under the current repayment schedule or under any adjusted schedule would impose undue hardship on the borrower and his or her dependents.

If the school concludes that repayment would not impose an undue hardship, the school must then decide whether the expected costs of opposing the discharge would exceed one-third of the total amount owed on the loan (principal, interest, late charges, and collection costs). If the expected costs do not exceed one-third of the total amount owed on the loan, the school must oppose the discharge and, if the borrower is in default, seek a judgment for the amount owed. If necessary, the school may compromise a portion of that amount to obtain a judgment.

If the school opposes a request for determination of dischargeability on the ground of undue hardship, a school may also file a complaint with the court to obtain a determination that the loan is not dischargeable and to obtain a judgment on the loan.

Schools that are state instrumentalities may, as an alternative, oppose an undue hardship claim by asserting their immunity from suit in bankruptcy. As with any other action in defending student loans in bankruptcy, the school should consult with counsel and should ensure that counsel is fully informed about recent changes in Department regulations to support this position.

Procedures for responding to proposed Chapter 13 repayment plan

Under Chapter 13, the borrower may generally obtain an adjustment in repayment terms of all of his/her debts. The borrower proposes a repayment plan that addresses whether and how each debt or class of debts will be paid. If the court approves the plan, creditors are bound to the terms of that plan for duration of the plan, typically three to five years. If the borrower's repayment plan proposes full repayment of the Perkins Loan, including all principal, interest, late charges, and collection costs on the loan, no response from the school is required. The school is also not required to respond to a proposed repayment plan that does not include any provision in regard to the Perkins Loan obligation or to general unsecured claims.

If the borrower proposes to repay less than the total amount owed and that the remainder be discharged, the school must determine, from its own records and court documents, the amount of the loan dischargeable under the plan. The school does this by subtracting the total proposed payments from the total amount owed. The school must also determine from its own records and court documents whether the borrower's proposed repayment plan meets the requirements of 11 U.S.C. 1325.

Bankruptcy Discharge Procedures (continued)

Two of those requirements are particularly relevant:

- First, the amount to be paid under the plan must at least equal the amount the school would receive if the debtor had filed under Chapter 7 rather than under Chapter 13.
- Second, to pay creditors under the plan, the debtor must use all income not needed to support himself or herself and his or her dependents.

If the borrower's proposed repayment plan does not meet the requirements of 11 U.S.C. 1325, the school must object to the confirmation by the court of the proposed plan, unless the cost of this action will exceed one-third of the dischargeable loan debt; if the cost will exceed one-third of the dischargeable debt, the school is not required to take this action.

Also, when a borrower proposes to repay less than the total amount owed, the school must determine whether grounds exist under 11 U.S.C. 1307 for the school to move to have the Chapter 13 case either dismissed or converted to a Chapter 7 proceeding. Such grounds include a borrower's failure to (1) begin payments under the plan within the required time (usually 30 days from the date the plan is filed), (2) file a proposed plan in a timely manner, or (3) pay required court fees and charges.

If the school determines that such grounds do exist, the school must move to dismiss or convert the Chapter 13 case to a Chapter 7 proceeding, unless the cost of this action will exceed one-third of the dischargeable loan debt.

After a borrower's proposed repayment plan is confirmed by the court, the school must monitor the borrower's compliance with the repayment plan. If the school determines from its own records or court documents that the borrower either has not made the payments required under the plan or has filed for a hardship discharge under 11 U.S.C. 1328(b), the school must determine whether grounds exist under 11 U.S.C. 1307 to dismiss the case filed under Chapter 13 or to convert the Chapter 13 case to a Chapter 7 proceeding or whether the borrower is entitled to a hardship discharge. If grounds do exist under 11 U.S.C. 1307 to dismiss or convert a Chapter 13 case, the school must move to convert or dismiss the case. If a borrower has not demonstrated entitlement to a hardship discharge under 11 U.S.C. 1328(b), the school must oppose the hardship discharge request, unless the costs of these actions, when added to those already incurred, would exceed one-third of the dischargeable debt.

Discharge for total and permanent disability (nonveterans)

If a Perkins borrower contacts a school to request a total and permanent disability (TPD) discharge, the school must tell the borrower to notify the Department of the borrower's intent to apply for a TPD discharge. The school must provide the borrower with the information needed for the borrower to contact the Department. When the borrower notifies the Department of the borrower's intent to apply for a TPD discharge, the Department provides the borrower with the information necessary to apply for the discharge. The Department identifies all FSA loans held by the borrower and notifies the holders of those loans of the borrower's intent to apply for a TPD discharge. The Department directs the loan holders to suspend collection activity on the borrower for a period not to exceed 120 days.

The Department informs the borrower of the suspension of collection activity and tells the borrower that the suspension of collection activity will end after 120 days if the borrower does not submit a TPD discharge application within that time. The borrower must submit to the Department a TPD discharge application certified by a physician who is a doctor of medicine or osteopathy legally authorized to practice in a state. By signing the TPD discharge application, the physician certifies that the borrower is totally and permanently disabled, as defined in the Perkins Loan Program regulations.

The borrower must submit the application to the Department within 90 days of the date the physician signed it. Alternatively, instead of having a physician certify the TPD discharge request, a borrower may provide the Department with documentation from the Social Security Administration (SSA) showing that the borrower qualifies for SSA disability benefits and that the borrower's next SSA disability review will be within five to seven years.

After the Department receives the TPD application, the Department notifies the borrower's FSA loan holders that the application has been received and directs the loan holders to maintain the suspension of collection activity while the Department reviews the application. During its review of the TPD application, the Department may ask the borrower to provide additional medical evidence and may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

If the Department determines that the borrower does not qualify for a total and permanent disability discharge, the Department notifies the borrower and the school resumes collection on the loan. If the Department determines that the borrower qualifies for a total and permanent disability discharge, it directs the school to assign the loan to the Department within 45 days. After the Department receives the assignment, it discharges the loan and notifies the borrower and the

school that the loan has been discharged. The notification to the borrower will explain to the borrower that the loan will be reinstated if, within three years of the date the Department granted the discharge, the borrower:

- ◆ has annual earnings from employment that exceed 100% of the poverty guideline for a family of two;
- ◆ receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;
- ◆ fails to ensure that the full amount of any disbursement of an FSA loan or TEACH grant received before the discharge date is returned to the loan holder or the Department, as applicable, within 120 days of the disbursement date; or
- ◆ receives a notice from the SSA that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period.

If your school receives payments from a borrower after the loan has been assigned to the Department, you must return the payments to the sender and notify the borrower that there is no need to make payments on the loan after it has been discharged due to TPD, unless the loan is reinstated or the Department directs the borrower otherwise.

Total and permanent disability is defined as the condition of an individual who—

Is unable to engage in any *substantial gainful activity** by reason of any medically determinable physical or mental impairment that: (i) Can be expected to result in death; (ii) Has lasted for a continuous period of not less than 60 months; or (iii) Can be expected to last for a continuous period of not less than 60 months; or has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability. See 34 CFR 674.51 for more detail.

* "a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both."

**A TPD Discharge Based on
Social Security (SSA) Disability**

For a borrower applying for a TPD discharge based on an SSA disability determination, the documentation from the SSA must show that the borrower qualifies for SSA disability benefits and that the borrower's next SSA disability review will be within five to seven years. If the notification of eligibility for disability benefits that borrower received from the SSA doesn't contain a medical review period, the borrower can obtain this information by calling his or her local SSA office or by calling 1-800-772-1213 and requesting a Benefits Planning Query.

Total and permanent disability loan discharge

34 CFR 674.61

